

REGISTRATION NO. 123456789

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Docket No. CAA-5-99-038

PROBATION DEPARTMENT

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1. Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (EPA), brought this administrative action seeking a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. On September 24, 1999, EPA filed the complaint in this action against Respondent International Malting Company. The complaint alleges that Respondent violated Section 113(d) of the Act, 42 U.S.C. § 7413(d), and Wisconsin Administrative Code § 154.11 at its Milwaukee facility in Milwaukee, Wisconsin.

3. Respondent filed an answer and requested a hearing under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2).

4. Respondent admits the jurisdictional allegations in the complaint and neither admits nor denies the factual allegations in the complaint.

5. Respondent waives its right to contest the allegations in the complaint, and waives its right to appeal under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

6. Respondent certifies that it is complying fully with Wisconsin Administrative Code § 154.11.

7. The parties consent to the terms of this consent agreement and final order (CAFO).
8. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

Civil Penalty

9. In consideration of the size of Respondent, the economic impact of the proposed penalty on Respondent, Respondent's compliance history and good faith efforts to comply, the duration of the alleged violations, the economic benefit of noncompliance, the seriousness of the violations, Respondent's agreement to perform supplemental environmental projects, and such other factors as justice may require, EPA agrees to mitigate the proposed penalty of \$169,287 to \$25,500.

10. Respondent must pay the \$25,500 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

11. Respondent must send the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

12. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number, must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check.

Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (R-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Thomas C. Nash (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3509

13. This civil penalty is not deductible for federal tax purposes.

14. If Respondent does not pay timely the civil penalty, or any stipulated penalties due under paragraph 28, below, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

15. Interest will accrue on any overdue amount from the date payment was due at a rate established under 26 U.S.C. § 6621(a)(2). Respondent will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Respondent will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty

will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

Supplemental Environmental Project

16. Respondent has proposed and must complete two supplemental environmental project (SEPs) designed to protect public health and the environment, briefly described below.

17. At its Milwaukee facility, Respondent must complete the SEPs as follows:

- a. SEP #1: Replace the two (2) manual truck loadout spouts in the West Plant with automated dust control loadout (DCL) spouts.
- b. SEP #2: Modify and replace the loadout shed and its doors by (1) enclosing the west side of the shed with metal sheeting; (2) extend the shed 20 feet to the South and enclose it on three sides; (3) install a roll door on the North end of the shed.

The effect of these modifications will be to enclose the loadout operation and create a "dead air" pocket.

18. Respondent states that the installation of the improvements set forth in paragraph 17, above, will eliminate fugitive dust emissions by 95%.

19. Respondent must spend at least \$20,000 to purchase and install the DCL spouts (SEP #1). Respondent must spend at least \$118,500 to complete the proposed modifications to the loadout shed (SEP #2).

20. Respondent must continuously use the improvements specified above for at least one (1) year following the completion of SEP construction.

21. Respondent certifies that it is not required to perform or develop either SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this

CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for either SEP in any other enforcement action.

22. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

23. Respondent must initiate design (authorization to begin design work) by March 30, 2000, complete design of both SEPs by August 15, 2000, substantially complete both SEPs by August 15, 2001, and achieve final completion of both SEPs and submit SEP completion reports to EPA, one report for each SEP, by December 31, 2001. This final completion report must contain the following information:

- a. detailed description of the SEP as completed;
- b. description of any operating problems and the actions taken to correct the problems;
- c. itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. description of the environmental and public health benefits resulting from the SEP, including an estimate of pollution reductions.

Respondent must submit periodic progress reports on SEP activities on a quarterly basis, beginning March 31, 2000.

24. Respondent must submit all notices and reports required by this CAFO by first class mail to:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division

U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

25. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, the information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

26. Following receipt of the SEP completion reports described in paragraph 23, above, EPA must notify Respondent in writing of its determination as to each SEP that:

- a. Respondent has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. Respondent has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 28.

EPA will make these determinations in a reasonable manner.

27. If EPA exercises option b. above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 28, below.

28. If Respondent violates any requirement of this CAFO relating to either SEP,

Respondent must pay stipulated penalties to the United States as follows:

a. Except as provided in subparagraph b, below, if Respondent did not complete SEP #1 satisfactorily according to this CAFO, as determined by EPA, Respondent must pay a stipulated penalty of \$10,000. Except as provided in subparagraph b, below, if Respondent did not complete SEP #2 satisfactorily according to this CAFO, Respondent must pay a stipulated penalty of \$75,000.

b. If Respondent did not complete either SEP satisfactorily, but EPA determines that Respondent: (i) made good faith and timely efforts to complete that SEP; and (ii) certified, with supporting documents, that it spent at least 90 percent of the required amount on the SEP, Respondent will not be liable for any stipulated penalty for that SEP.

c. If Respondent satisfactorily completed SEP #1, but spent less than 90 percent of the required amount on that SEP, Respondent must pay a stipulated penalty of \$2,500. If Respondent satisfactorily completed SEP #2, but spent less than 90 percent of the required amount on that SEP, Respondent must pay a stipulated penalty of \$20,000.

d. If Respondent failed to submit timely either SEP completion report required by paragraph 23, above, Respondent must pay a stipulated penalty of \$100 for each day after the report was due until it submits the report.

29. EPA's determinations of whether Respondent satisfactorily completed either SEP and whether it made good faith, timely efforts to complete either SEP will bind Respondent.

30. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraphs 10-12 and 28, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

31. Any public statement that Respondent makes referring to either SEP must include the following language, "Respondent undertook this project under the settlement of the United States

Environmental Protection Agency's enforcement action against Respondent for alleged violations of the Clean Air Act."

32. If an event occurs which causes or may cause a delay in completing either SEP as required by this CAFO:

- a. Respondent must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

General Provisions

33. This CAFO settles EPA's claims for civil penalties for the violations alleged in the complaint.

34. Nothing in this CAFO restricts EPA's authority to seek Respondent's compliance with the Act and other applicable laws and regulations.

35. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state and local laws, and regulations.

36. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine Respondent's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).


37. The terms of this CAFO bind Respondent, and its successors, and assigns.

38. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

39. Each party agrees to bear its own costs and fees in this action.

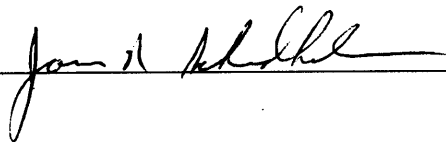
40. This CAFO constitutes the entire agreement between the parties.

**U.S. Environmental Protection
Agency, Complainant**

Date: 3-26-00 By: 
Bharat Mathur, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)

CONSENT AGREEMENT AND FINAL ORDER
International Malting Company, LLC
Docket No. CAA-5-99-038

International Malting Company, LLC, Respondent

Date: 3/14/00 By: 

CONSENT AGREEMENT AND FINAL ORDER
International Malting Company, LLC
Docket No. CAA-5-99-038

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk.

Date: _____

3/28/00



Francis X. Lyons
Regional Administrator
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

CERTIFICATE OF SERVICE

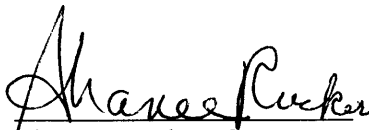
I, Shanee Rucker, certify that I hand delivered the original of the foregoing Consent Agreement and Final Order (CAFO), docket number CAA-5-99-038, to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Respondent's Counsel by placing it in the custody of the United States Postal Service addressed as follows:

Mr. Don Gallo, Esq.
Michael, Best & Friedrich
100 East Wisconsin, Suite 3300
Milwaukee, Wisconsin 53202

cc: Lloyd Eagan, Director
Bureau of Air Management
Wisconsin Department of Natural Resources
101 S. Webster Street
P.O. Box 7921
Madison, Wisconsin 53707

Lakshmi Sridharan, Regional Air Leader
Wisconsin Department of Natural Resources
Southeast Region
2300 North Dr. Martin Luther King Jr. Drive
P.O. Box 12435
Milwaukee, Wisconsin 53212

on the 31 day of March, 2000.


Shanee Rucker, Secretary
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 2199026498

REC'D
MAR 31 10:41
PRO
REGION 5